

**Question: Why does the official comment period regarding DHR rule changes occur nearly two months after the effective date of the rules?** This would seem to suggest that debate or discussion of the changed rules is essentially pointless.

Under the Idaho Administrative Procedure Act (Title 67, Chapter 52, Idaho Code) a temporary rule can be made immediately effective and enforceable upon its adoption by the agency and without legislative review and approval. However, a temporary rule can only be made enforceable if it meets certain criteria outlined in the Administrative Procedure Act (APA) and is approved by the Governor's Office. A temporary rule must be published in the first available issue of the Administrative Bulletin after its adoption by the agency. The first available Administrative Bulletin after the adoption date of August 24 is October 1. Temporary rules that are adopted by an agency before the beginning of a legislative session are subject to legislative review. The APA requires that the text of a temporary rule be published in the Administrative Bulletin. The same is true for a proposed rule. For this reason combining the temporary and proposed rules into a single, concurrent rulemaking is allowed when the text of the two rulemakings is identical. These two rulemaking actions are considered separate, legal actions even though published concurrently.

As indicated previously, the DHR temporary and proposed rule is scheduled to be published October 1, 2008, the first available Administrative Bulletin after August 24, with a comment period from October 1 – 22, 2008. All comments received during the comment period must be accepted by the agency and included in the rulemaking record. The APA states that written comments "must be considered" by the agency prior to the adoption of the pending rule. All written comments are required to become part of the rulemaking record.

For more information on how the process works, you can visit the Office of Administrative Rules website at <http://adm.idaho.gov/adminrules/>.

**Question: Why is MDA (Medical, Dental, or Optical Appointment Leave) being removed from DHR rules?**

MDA leave has been removed from Division of Human Resources (DHR) rules because there is no basis in Idaho Code for the use of this type of leave. Idaho Code does provide sick leave for the type of medical, dental, or optical appointments that were covered by MDA leave. Employees may also use compensatory time, vacation, or leave without pay for these appointments. The intent of this change is to ensure that DHR rules conform to Idaho Code, not to take away a benefit or create cost savings.

**Question: How does Rule 241.02 (Layoff after 12 weeks disability) affect me?**

This change does not cutback on disability benefits. An employee who is disabled is still eligible for short-term disability benefits for six months.

The change is in the length of time that an agency is required to hold a position open for an employee who is disabled or otherwise unable to work due to their own medical condition. Per the new Rule, such employees are to be medically laid off after twelve weeks' absence or when accrued sick leave has been exhausted, whichever is longer. The change from six months to twelve weeks is patterned after the amount of time granted for Family Medical Leave by the federal government and provides a balance between giving an employee the chance to return to work and the needs of the agency.

Even though the position will be declared vacant and the employee laid off after the longer of twelve weeks' or when the employee's accrued sick leave has been exhausted; agencies have the discretion to keep the position open if they choose.

**In an effort to provide clarification to this temporary rule, the Department of Transportation provided the following information to their employees:**

Several misconceptions surfaced after the announcement, explains Mary Harker, ITD Human Resource Services manager. A number of state employees were under the impression that long-term disability will be affected by the rule related to layoffs.

That is not the case, Harker explains.

"If someone is unable to do (his or her) job because of medical reasons, that person will be laid off after three months (twelve weeks) or when their leave (annual and sick) is exhausted, whichever is longer."

"This allows supervisors to fill the position after 12 weeks rather than six months."

Once the affected employee becomes well enough to return, he or she can be rehired from a layoff register without the loss of accrued hours of service or salary level. Their layoff rights are good for one year from the date they were laid off.

The rule does not affect short- or long-term disability benefits, explains Carlin Hill, Human Resource Specialist, of Human Resource Services. "That is totally separate. Employees who qualify for short- or long-term disability will still have the same benefit, even if the 12-week medical termination takes place," she says.